THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.15704 OF 2006

ORDER:

This Writ Petition is filed seeking a declaration that the order dated 21.7.2006, passed by the 1st respondent - Prohibition & Excise Superintendent, Karimnagar, disapproving the premises for establishment of the petitioner's shop, in pursuance of the licence granted under Andhra Pradesh Excise (Lease of Right of Selling by Shop and Conditions of Licence) Rules, 2005 (for short "the Rules"), is arbitrary and illegal.

It is not in dispute that in pursuance of the notification dated 1.7.2006, issued under Rule 5 of the Rules, the petitioner was declared as the successful bidder in respect of Teegalaguttapally village, Karimnagar mandal and district. In compliance with the Statutory Rules, the petitioner made the necessary deposits and submitted the sketch map of the premises bearing Door No.5-5/A in Teegalaguttapally village, where he proposed to establish the shop, for approval of the 1st respondent. However, the 1st respondent by proceedings dated 21.7.2006, informed the petitioner that the said premises bearing Door No.5-5/A, which was found to be very near to the border of Karimnagar Municipal Corporation limits and 2 kms away from the main village of Teegalaguttapally, was not approved for establishment of the shop. Accordingly, the petitioner was directed to select another suitable premises in the main village of Teegalaguttapally and submit the particulars of the new premises to grant the licence in his favour. Aggrieved by the same, this writ petition is filed contending *inter alia*, that since admittedly, the premises in question is situated within the limits of Teegalaguttapally Gram Panchayat and that the Gram Panchayat had also expressed its no objection to open the shop in the said premises, the 1st respondent is not justified in not approving the said premises to establish the shop. It

is also contended that since none of the restrictions specified under Rule 27 of the Rules was attracted, the 1st respondent was bound to grant the licence. It is further contended that the reasons on which the premises was not approved i.e., the location of the premises within 150 meters from the boarder of Karimnagar Municipal Corporation limits and that it was away from the main village of Teegalaguttapally, were untenable and not valid under law for disapproving the premises selected by the petitioner.

On behalf of respondents 1 to 4, a counter-affidavit has been filed by the Prohibition & Excise Superintendent (FAC) Karimnagar, stating that the Station House Officer, Karimnagar Rural P.S. has submitted a report with regard to suitability of the proposed premises for establishment of shop by the petitioner. The said report revealed that the Station House Officer had inspected the proposed premises on 19.7.2006 and found that the premises was situated very near i.e., 150 mts from Karimnagar Municipal Corporation limits and 2 kms away from the main village of Teegalaguttapally, which is a hamlet of Arepally Revenue village of Karimnagar Mandal. The Station House Officer had also expressed that there would be a law and order problem if the shop is established in the said premises and it would also affect the revenue of the shops situated in Karimnagar Municipal Corporation. In the light of the said report submitted by the Station House Officer, Karimnagar Rural P.S., the 1st respondent opined that if the petitioner is permitted to locate his shop in the proposed premises, it may lead to unhealthy competition among the licensees. That apart, since the very purpose of the department in notifying the shop at Teegalaguttapally village is to meet the liquor needs of that particular village, it was felt that the premises located 2 kms away from the main village and very near to the Karimnagar Municipal Corporation, is not advisable. It was also found that for the last 10 years the shop in Teegalaguttapally village was situated in 1st Ward of the village. That apart, the licensees of Karimnagar town made a complaint dated

13.7.2006 to the 1st respondent, marking copies of the Commissioner of Prohibition & Excise, Hyderabad, District Collector, Karimnagar and Joint Commissioner of Prohibition & Excise, Hyderabad and others, alleging that they were being harassed by the petitioner. Pursuant thereto, the 1st respondent ordered an enquiry by the Assistant Excise Superintendent, who submitted his report stating that the petitioner has to select a suitable premises at Teegalaguttapally main village only. It is also stated that the locality where the petitioner had selected his premises is covered with a scattered habitation of around 400 people, whereas the total population of that village, as per 2001 senses, was 4612. In the circumstances, the proposed premises was found to be not suitable and, accordingly, the same was rejected.

One of the licensees of the shops in Karimnagar Municipal Corporation, got himself impleaded as respondent No.5, and filed a separate counter-affidavit on the same lines.

I have heard the learned counsel for both the parties and perused the material on record.

At the outset, Rule 27 of the Rules, which deals with selection of premises for establishing the shop for sale of liquor, to the extent it is relevant, may be extracted hereunder:

> *"**27. Selection of Premises** :-*
>
> *(1) The successful tenderer **subject to the approval** of Proh. & Excise Superintendent, shall select **suitable premises** for sale of IL & FL within the Municipal Corporation, Municipality, village/town/city or area/locality as the case may be notified in the District Gazette. It shall be at least 100 meters away from the places of Public worship, Educational Institutions, Hospitals and 50 Meters away from Highways except in Municipal Corporations and 5Kms belt area of the periphery of Municipal Corporations.(**emphasis supplied**)*
> *Explanation:- … … … … … … …"*

The scope and object of the above said Rule has been considered by this Court in **Ch. Subrahmanyeswara Rao v. Commissioner of Endowments, Prohibition & Excise, Hyderabad**[1], and having regard to the words "**subject to the**

approval" and "**suitable premises**" employed in the said Rule, it was held that even after compliance with the requirement under Rule 27, the Prohibition & Excise Superintendent, in exercise of his discretion, may decline to approve the premises selected by the successful bidder.

The relevant portion from the said decision may be extracted hereunder:

> A perusal of the above Rule, with particular reference to the words "***subject to the approval***" and "***suitable premises***" makes it clear that the Legislature intended to confer some amount of discretion on the Prohibition & Excise Superintendent in the matter of deciding suitability of the premises. There is nothing in the Rule to indicate either expressly or impliedly that once the conditions specified under Rule 27 are satisfied, the Prohibition & Excise Superintendent is bound to grant the licence. On the other hand, the words "subject to the approval" and "suitable premises", undoubtedly indicate that while assessing the suitability of the premises selected by the successful tenderer the Prohibition & Excise Superintendent, if necessary, can go beyond the requirements specified under Rule 27. Having regard to the particular facts and circumstances, even after compliance with the requirements under Rule 27, the Prohibition & Excise Superintendent in exercise of his discretion may decline to approve the premises selected by the successful tenderer. However such exercise of discretion shall not be arbitrary or unreasonable, but must be based upon cogent material having nexus to the purpose sought to be achieved."

As expressed in the above decision, though it is open to the Prohibition & Excise Superintendent, in appropriate cases, to decline to approve the premises selected by the successful tenderer, such exercise of discretion shall not be arbitrary or unreasonable.

In the case on hand, the 1st respondent, having called report from the concerned Station House Officer, opined that in case the petitioner is permitted to establish his shop in the premises in question, it would lead to unhealthy competition among the licensees of Karimnagar Municipal Corporation and that the shop will not be catering to the needs of the habitants of Teegalaguttapally village. Hence, it cannot be said that the 1st respondent has passed the

impugned order without application of mind to the relevant facts. The impugned order was based on the factual report submitted by the concerned Station House Officer and it cannot be said that the reasons upon which the premises was disapproved, have no nexus to the purpose sought to be achieved. In the circumstances, I am unable to hold that the discretion exercised for the 1st respondent in holding that the premises selected by the petitioner is not suitable, is vitiated on account of extraneous considerations, much less arbitrary or unreasonable, warranting interference by this Court in exercise of jurisdiction under Article 226 of the Constitution of India.

The writ petition is devoid of any merit and the same is accordingly, dismissed. No costs.

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(G. ROHINI, J.

14th August, 2006.
Kgr

Note:- CC in 3 days.

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.15704 OF 2006

14th August, 2006.

Between:

P. Vamshidhar Rao. .. Petitioner.

And

The Prohibition & Excise Superintendent,
Karimnagar and three others. .. Respondents.

[1] 2005(6) ALD 501.